

(1) The basis for the removal, *i.e.*, 5 U.S.C. 3595(b)(5) if the basis is expiration of the 45-day OPM placement period, or 5 U.S.C. 3595(b)(4) if the basis is declination of a reasonable offer of placement, in which case identify the position offered and the date on which it was declined;

(2) The effective date of the removal;

(3) Placement rights outside the SES and, when applicable, the appointee's eligibility for discontinued service retirement in lieu of placement; and

(4) Reminder of the appointee's appeal rights.

[60 FR 6389, Feb. 2, 1995]

#### § 359.606 Appeals.

A career appointee may appeal to the Merit Systems Protection Board whether the reduction in force complies with the competitive procedures in § 359.602(a).

#### § 359.607 Records.

Each agency shall maintain current records needed to determine the retention standing of its competing appointees. The agency shall allow the inspection of its retention registers and related records by an appointee to the extent that they have a bearing on the appointee's situation. The agency shall preserve intact all registers and records relating to a reduction-in-force action for at least 2 years from the effective date of the action.

#### § 359.608 Transfer of function.

(a) *Transfer of function* means the transfer of the performance of a continuing function from one agency to one or more other agencies.

(b) A career appointee is entitled to accompany his or her function to the new agency without any change in tenure if the alternative is removal from the SES in the current agency under reduction in force.

### Subpart G—Guaranteed Placement

#### § 359.701 Coverage.

This subpart covers career appointees, other than reemployed annuitants, who are removed from the SES under any of the following conditions:

(a) Removal during the probationary period under subpart C of this part or under subpart D of this part for other than misconduct, neglect of duty, malfeasance, or other disciplinary reasons under § 359.403, § 359.404, or part 752, subpart F, of this chapter, if at the time of appointment to the SES the individual held a career or career-conditional appointment or an appointment of equivalent tenure, as determined by OPM. An appointment of equivalent tenure is considered to be an appointment in the excepted service other than an appointment—

(1) To a Schedule C position established under part 213 of this chapter;

(2) To a position that meets the same criteria as a Schedule C position; or

(3) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) Removal as the result of:

(1) Failure to be recertified under subpart C of this part;

(2) Less than fully successful executive performance under subpart E of this part; or

(3) A reduction in force under subpart F of this part. The appointee must have completed the required probationary period under the SES or was not required to serve a probationary period.

[54 FR 18876, May 3, 1989, as amended at 56 FR 172, Jan. 3, 1991; 57 FR 10125, Mar. 24, 1992]

#### § 359.702 Placement rights.

(a) An appointee covered by this subpart is entitled to be placed in a vacant civil service position (other than an SES position) in any agency that is—

(1) A continuing position at GS-15 or above, or equivalent, that will last at least three months; and

(2) A position for which the appointee meets the qualifications requirements.

(b) A probationary appointee, or a nonprobationary appointee who at the time of appointment to the SES held a career or career-conditional appointment (or an appointment of equivalent tenure, as defined in § 359.701(a)), is entitled to be placed in a position of tenure equivalent to that of the appointment held at the time of appointment to the SES. This tenure requirement does not apply—

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(1) If the agency taking the removal action does not have a position of equivalent tenure for which the appointee meets the qualifications requirements; or

(2) If the appointee is willing to accept a position having a different tenure.

#### § 359.703 Responsibility for placement.

The agency taking the removal action is responsible for placing the appointee in an appropriate position within the agency, or for arranging a transfer to an appropriate position in another agency. Any transfer must be mutually acceptable to the appointee and the gaining agency.

#### § 359.704 Restrictions.

Placement of an appointee under this subpart shall not cause the separation or reduction in grade of any other employee.

#### § 359.705 Pay.

(a) An appointee placed under this subpart in a position outside the SES (in the same or different agency) is entitled to receive basic pay at the highest of—

(1) The rate of basic pay in effect for the position in which the appointee is being placed (*i.e.*, a rate of basic pay within the normal rate range of the position in which placed, consistent with the rules of the pay system covering such position);

(2) The rate of basic pay currently in effect for the position the appointee held immediately before being appointed to the SES; or

(3) The rate of basic pay in effect for the appointee immediately before removal from the SES.

(b)(1) The rate of basic pay under paragraph (a)(1) and (2) of this section includes any applicable locality payment under 5 U.S.C. 5304, special rate supplement under 5 U.S.C. 5305, or similar payment under other legal authority.

(2) When an employee is entitled to a payable rate of basic pay under paragraph (a)(2) or (3) of this section which exceeds the maximum payable rate of basic pay for the grade or level of the employee's position after placement, the resulting saved rate is subject to

the adjustment and termination rules in paragraphs (d) through (f) of this section.

(c)(1) For an employee placed in a General Schedule position, a saved rate established under this section may not be supplemented by a locality payment under 5 U.S.C. 5304, a special rate supplement under 5 U.S.C. 5305, or a similar payment under other legal authority.

(2) A saved rate established under this section is subject to the limitation on Senior Executive Service pay in 5 U.S.C. 5382 of the rate for level II of the Executive Schedule.

(3) A saved rate established under this section is considered an employee's rate of basic pay for the same purposes as a retained rate under 5 CFR part 536, as described in 5 CFR 536.307.

(d) A saved rate established under this section must be adjusted in connection with a pay schedule adjustment according to the following rules:

(1) When the maximum payable rate of basic pay for the grade or level of an employee's position is increased while the employee is receiving a saved rate, the employee is entitled to a pay adjustment equal to 50 percent of the amount of the increase in that maximum payable rate, except as otherwise provided in this section.

(2) If an employee's official worksite is changed while the employee is receiving a saved rate, a change in the applicable range maximum because of a change in an employee's official worksite is not considered in applying paragraph (d)(1) of this section. Instead, any adjustment of the employee's saved rate in conjunction with a change in official worksite must be determined under paragraph (e) of this section. If an employee's range maximum is increased because of a pay schedule adjustment on the same effective date as a change in the employee's official worksite, the saved rate must be adjusted under paragraph (d)(1) of this section before applying paragraph (e) of this section.

(3) A change in an employee's rate range maximum resulting from a change in the employee's position (*e.g.*, change in occupational series) that causes the employee to be covered by a different pay schedule does not result